

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 805 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
(No. 1 to 5 NO)

S C GUPTA

Versus

STATE OF GUJARAT

Appearance:

MR. SHALIN MEHTA for Petitioner

MR. L.R. POOJARI, LD.GOV'T. COUNSEL for Respondent No. 1

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 12/08/97

ORAL JUDGEMENT

It is not in dispute that the petitioner Government Employee had to suffer the Departmental Inquiry on the ground of an alleged misconduct. The departmental proceedings have ultimately been terminated in favour of the petitioner. It is also not in dispute that the criminal prosecution launched against the petitioner, on the basis of the very same allegation, has

also failed and ultimately, the petitioner was able to have an acquittal before the Competent Criminal Court. This orders, both in the realm of departmental proceedings and criminal jurisdiction have become final. It means that, the petitioner has been exonerated under the departmental inquiry and that, he has been able to earn an acquittal before the competent Criminal Court.

It is not in dispute that the petitioner employee had to remain under suspension from April 23, 1982 to October 25, 1985. There has been the order Annexure-I dated January 17, 1986 pronounced by the Under Secretary, Labour & Employment Department of the State. This order would go to show that the above said period of suspension should be adjusted against the available leave to the petitioner. This is the point where the petitioner has a lot of grievance to be made before me. Ld. counsel Mr. Shalin Mehta who appears on behalf of the petitioner urges as a foremost contention that, a reasonable opportunity of being heard was not given to the petitioner before passing the above said orders, which have got serious financial implications on the earning of the petitioner. The contention coming from learned counsel Mr. Mehta appears to have been based upon the Supreme Court pronouncement in Shri. B.D. Gupta, Appellant vs. State of Haryana, Respondent, A.I.R. 1972, S.C. pg. 2472. This Supreme Court pronouncement makes a reference to an earlier decision by the same Court, namely M. Gopala Krishna Naidu's case, A.I.R. 1968 SC pg. 240. The Supreme Court has made it clear that, if an order affects an employee financially, it must be passed after objective consideration and assessment of all the relevant facts and circumstances and after giving the person concerned full opportunity to make out his own case about that order.

It is not in dispute before me that, before the above said orders Annexure-I dated January 17, 1986 came to be passed, the petitioner employee was not afforded a reasonable opportunity of being heard on the question, which ultimately came to be decided under the said orders. Therefore, it shall have to be accepted that, the above said orders which came to be passed behind the back of the petitioner employee would tantamount to the violation of the principles of natural justice. On this count alone the present petition shall have to be allowed in part and the matter shall have to be remanded to the said authority for a fresh consideration, after affording a reasonable opportunity of being heard to the petitioner employee. I order accordingly. Rule is made absolute to the above said extent.

It should be clarified that, learned counsel Mr. Mehta wanted to urge before me that, on merits such orders could not have been passed. But, when a view is being taken by me that the entire matter requires a fresh consideration, I do not express any opinion on this contention coming from learned counsel Mr. Mehta for the petitioner, and other contentions and assertions raised and made in the petition. All these shall have to be decided by the said authority, who would decide the case of the petitioner regarding the adjustment of suspension period, after affording the opportunity of being heard. The above said authority shall complete the above said exercise as expeditiously as possible, and at any rate within a period of three months from the date of receipt of the writ of the present orders, or an authenticated copy of the same which could be served upon the said authority by the petitioner. The petition stands disposed of with the above said orders. No costs. Direct service permitted.

/vgn.